



CENTER FOR  
FOOD SAFETY

May 15, 2019

**SUBMITTED VIA ONLINE SUBMISSION FORM**

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
(202) 566-1667

**RE: Freedom of Information Act Request**

To the U.S. Environmental Protection Agency (EPA) FOIA Officer:

The Center for Food Safety (CFS) is a 501(c)(3) nonprofit organization that addresses the impacts of our current industrial food production system on human health, animal welfare, and the environment. CFS has a long history of promoting sustainable farming practices and advocating and litigating cases to maintain strong regulations for genetically engineered organisms. Consistent with this mission and pursuant to 40 C.F.R. § 2.107(l)(2)(i) and the Freedom of Information Act, 5 U.S.C. § 552, CFS respectfully requests the following information:

**Any and all documents, concerning EPA's communications, from January 1, 2010 to present, with Dr. William Powell, The American Chestnut Foundation, or any other EPA staff regarding GE chestnuts; GE chestnut's production of the enzyme OxO; or EPA's policies involving the registration of genetically engineered plants as Plant Incorporated Protectants (PIPs).**

"Any and all documents" includes, but is not limited to, all communications, correspondence, minutes, memoranda, maps, plans, drawings, emails, reports, databases, and notes. This request includes all documents that have ever been within your custody or control, whether produced by you or by any others, and includes all current and former working, investigative, retired, electronic, and/or other files.

This request is being sent to the EPA FOIA Officer with the understanding that it will be forwarded to other officers, offices, or departments with information pertinent to this request.

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## REQUEST FOR FEE-WAIVER

CFS requests that pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l)(2)(i), EPA waive all fees in connection with the procurement of this information. As demonstrated below, the nature of this request meets the test for fee waiver as expressed in the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l)(2)(i).

In determining whether the fee waiver criteria is satisfied, CFS respectfully reminds the EPA that FOIA is inclined toward disclosure and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations. *See* 132 Cong. Rec. S. 14270-01, (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”). Furthermore, the Ninth Circuit Court of Appeals has interpreted this fee waiver section broadly, holding that the section “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy).

The factors EPA must consider in deciding a fee waiver request are laid out in 40 C.F.R. § 2.107(l)(2)(i) and those relating to a significant contribution to public understanding of the operations or activities of the government can be summarized as follows:

- (1) Whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the Agency.
- (2) Whether the contents of the records to be disclosed have an informative value.
- (2) Whether the disclosure of the information will likely contribute to an understanding of the subject by the general public.
- (4) Whether the contribution to public understanding is significant.

40 C.F.R. § 2.107(l)(2)(i).

**I. THE PRESENT DISCLOSURE IS IN THE PUBLIC INTEREST BECAUSE IT WILL SIGNIFICANTLY CONTRIBUTE TO PUBLIC UNDERSTANDING OF THE OPERATIONS OR ACTIVITIES OF GOVERNMENT.**

The requested disclosure will contribute to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

**A. The subject of the disclosure concerns “the operations and activities of the government.”**

The requested information pertains to the EPA's regulation of genetically engineered plants that produce pesticides. EPA is the federal agency statutorily mandated to classify and regulate genetically engineered plants as plant incorporated protectants. It is irrefutable that EPA's decisions regarding whether the GE chestnut and its production of the enzyme OxO is a PIP is a clearly identifiable operation and activity of the government. The information sought by CFS reflects an interest in the risks associated with genetically engineered plants that produce pesticides to human health, animal welfare, and the environment and is of the utmost concern to the public. This disclosure will demonstrate to the public at large the nature of EPA's process and conclusions concerning regulation of genetically engineered plants as PIPs.

**B. The disclosure is "likely to contribute significantly to public understanding" of government operations or activities.**

As discussed in the previous section, the present disclosure will provide the public with a better understanding of EPA's role in regulating genetically engineered organisms, as well as provide the public with information about a specific species that is of great public interest. Simultaneously, disclosure of the requested information will aid CFS in fulfilling its function of public oversight of government action. Public oversight of agency action, specifically, is a vital component in our democratic system and is the bedrock upon which FOIA stands.

**C. CFS is highly qualified to analyze the requested information, and also aptly positioned to disseminate it to the public.**

CFS is a nonprofit, public interest organization with over 960,000 farmer and consumer supporters nationwide that informs, educates, and counsels the public—via legal action, our website, our True Food Network, books and reports, and our quarterly newsletter, *Food Safety Now!*—on the harm done to human health, animal welfare, and the environment by industrial agriculture. Through nearly two decades of involvement in technical analysis, environmental litigation, and policymaking as it relates to pesticide safety, CFS has gained unique expertise and an extensive background in issues with industrial agriculture, and specifically in issues surrounding genetically engineered organisms. Regarding genetically engineered organisms, CFS has litigated groundbreaking cases, repeatedly submitted comments and petitions to state and federal agencies, and published legal articles on federal oversight processes. Consequently, CFS is highly qualified to fully comprehend, analyze, and organize the requested records.

In addition, CFS is aptly positioned to disseminate the requested information because we have a long history of educating the public about the negative effects of genetically engineered plants that produce pesticides on human health, animal welfare, and the environment. For example, CFS has educated and informed consumers and its members about genetically engineered organisms by, among other things, creating publicity campaigns; producing books, reports, and a newsletter; and maintaining a website that includes numerous articles about developments in attendant genetically engineered plants, and its consequent human health and environmental harms. Accordingly, CFS is an effective vehicle to disseminate information to the

general public about the regulation of genetically engineered plants and its threats to human and animal health and the environment.

Federal courts have found that dissemination to 2,500 people through a newsletter and the intent to start a website is sufficient to meet the “reasonably broad audience” factor. *Forest Guardians v. U.S. Dep’t of Interior*, 416 F.3d 1173, 1180 (10th Cir. 2005). Moreover, they have found that the proven ability to digest and disseminate highly technical information, as demonstrated by past analysis and dissemination, merits giving nonprofit organizations fee waivers. *See W. Watersheds Project v. Brown*, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004). CFS’s activity in these respects far outstrips any minimums established by judicial interpretation.

## **II. OBTAINING THE INFORMATION IS OF NO COMMERCIAL INTEREST TO CENTER FOR FOOD SAFETY.**

As noted, CFS is a 501(c)(3) nonprofit environmental advocacy organization that works to address the impacts of our industrial food on human health, animal welfare, and the environment. CFS works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. *See, e.g.*, OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. Specifically, in no manner does CFS seek information from EPA for commercial gain or interest. CFS respectfully files this FOIA request pursuant to its goal of educating the general public about the adverse effects of industrial agriculture. Upon request and free of charge, CFS will provide members of the public with relevant information obtained from the agency.

Based upon the foregoing, CFS requests that this FOIA be classified within EPA’s fee waiver category and that EPA send the requested information as required by law. As this is a matter of extreme importance to CFS, we look forward to your reply within twenty working days as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(i). If the responsive records are voluminous please contact us to discuss the proper scope of the response. If any exemption from FOIA’s disclosure requirement is claimed, please describe in writing the general nature of the document and the particular legal basis upon which the exemption is claimed. Should any document be redacted, please indicate the location of the redaction through the use of black ink. Please provide any and all non-exempt portions of any document that may be partially exempt due to some privilege as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Please send all materials to [FOIA@centerforfoodsafety.org](mailto:FOIA@centerforfoodsafety.org). Electronic materials are preferred but if records must be mailed, please send to the 303 Sacramento Street, 2nd Floor San Francisco, CA 94111. Please call me at 415-826-2770 or email me at [tyundt@centerforfoodsafety.org](mailto:tyundt@centerforfoodsafety.org) if you have any further questions about this request. Thank you for your attention to this request.

Sincerely,

/s/ Tori Yundt

Tori Yundt

Legal Fellow

Center for Food Safety

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